

**KENTUCKY PERSONNEL BOARD
MINUTES OF AUGUST 12, 2011**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chairman Larry B. Gillis on August 12, 2011, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Wayne "Doug" Sapp, Member
Susan Gardner, Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Swearing in new Board members – Judge Tommy Chandler and Don Blevins

The first order of business was to swear in two new Board Members, Tommy Chandler and Donald W. "Don" Blevins, by General Counsel Boyce A. Crocker. [Judge Chandler was appointed by Governor Steven Beshear to replace Cecil F. Dunn and will serve for the remainder of the term which expires January 1, 2014. Mr. Blevins was appointed by Governor Steven Beshear to replace Suzanne Cassidy and will serve for the remainder of the term which expires January 1, 2012.]

2. READING OF THE MINUTES OF REGULAR MEETING HELD JULY 8, 2011

The minutes of the last Board meeting had been previously circulated among the members. Vice Chairman Gillis asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Dr. Stevens seconded, and the motion carried 6-0. [Vice Chairman Gillis does not vote unless noted.] The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek welcomed the new Board members and stated he looked forward to working with them.

Mr. Sipek advised that an important figure in Personnel Board history, Wil DeBruler, passed away. Following a distinguished career with the F.B.I., Mr. DeBruler served as the Board's General Counsel and for a short time as Acting Executive Director.

Mr. Sipek advised that an appeal concerning the issue of appointing authority in *Cabinet for Health and Family Services v. John Ruth*, 2011-CA-000220-I, the Court of Appeals sent this matter back to Franklin Circuit Court for a ruling on the merits.

Mr. Sipek stated that the Board members should have received a copy of the amendment to regulation 101 KAR 1:375, Employee Grievances and Complaints

Mr. Sipek stated that the Personnel Cabinet and the Governor's Employee Advisory Council (GEAC) had requested changes consistent with the Master Agreement. The major changes were extending the immediate supervisor's response time from five (5) to ten (10) work days; the next line supervisor's response time from two (2) to five (5) work days; and to give the employee five (5) work days after each immediate supervisory review to appeal the grievance to the next level. Mr. Sipek stated that Mr. Crocker spent a lot of time on this matter and that agencies were given sufficient time to review the changes. No objections were noted by the agencies. Mr. Sipek stated that he would like to have the changes approved by the Board in order to get the process started at the Legislative Research Commission.

Ms. Gardner voiced her concerns about the additional response times as it may go beyond sixty days (time limit for some employees to file appeals).

Mr. Sapp moved to approve the amendment to 101 KAR 1:375, Employee Grievances. Dr. Stevens seconded and the motion carried 5-0, with Ms. Gardner abstaining.

Vice Chairman Gillis advised that the International Personnel Management Association is having a fall conference and a round table session is set for September 23, 2011, to discuss appeals. He invited Mr. Sipek and Mr. Crocker to attend the conference and help out with answering questions from employees.

At the conclusion of Mr. Sipek's report, Vice Chairman Gillis called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, on behalf of the Personnel Cabinet, came forward to present the Cabinet's report.

Ms. Bevington reported that the Commonwealth Office of Technology (COT) has issued a new social media (Facebook, Twitter, etc.) policy, CIO-061, to offer guidance to agencies to ensure appropriate web presence. There is a disclaimer that the agency does not endorse the opinions expressed. This policy went into effect July 1, 2011.

Mr. Sipek asked if individual employees were under this policy. Ms. Bevington stated employees are covered under "Incidental Use" policy (CIO-060).

Vice Chairman Gillis advised that a copy of both policies would be provided to the Board members, as this issue comes up frequently in appeals.

Ms. Bevington summarized the amendments, incorporated by reference, and answered the Board's questions concerning the following Personnel Cabinet regulations:

- A. Career Opportunities Systems (101 KAR 2:046 and 2:056)
- B. Employee Performance Evaluation System (101 KAR 2:180)
- C. Sick Leave Sharing Procedures (101 KAR 2:105)
- D. Annual Leave Sharing Procedures (101 KAR 2:106)

Mr. Hutcheson moved to accept the amendments in the regulations specified as "A" through "D." Ms. Gardner seconded and the motion carried 5-0, with Mr. Blevins abstaining.

5. ORAL ARGUMENTS - NONE

6. INVESTIGATIONS

A. Request for Investigation of Transportation Cabinet

Mr. Sipek stated that this was an investigation brought by Randall Arvin, who also had filed an appeal. Mr. Sipek stated that a copy of notes from the 2008 minutes concerning discussion of this matter have been provided to the Board members. Out of twelve appeals, two appeals pertinent to the investigation are pending: Lemon Moore, which is on the Board's agenda today, and William Madden, in which a recommended order will be issued within a few months. It is difficult to sort out the management decisions concerning the reorganization and the decisions concerning the merit system pursuant to KRS Chapter 18A, over which the Board has jurisdiction. Mr. Sipek stated that after the appeal process is completed, this matter will be revisited.

B. Anonymous Request for Investigation of Department of Agriculture

Prior to discussing the status of the request for investigation, Vice Chairman Gillis advised the Board that he will recuse himself from participating in any discussion of this matter and will not vote on this issue. Vice Chairman Gillis then turned the meeting over to Dr. Stevens.

Mr. Sipek stated that he has had contact with the Department of Agriculture, but a written response has not been provided. However, Ms. Danita Fentress-Laird and Mr. Clint Quarles, Department of Agriculture, were available to answer the Board's questions.

Ms. Fentress-Laird advised that this matter involved the position of Internal Policy Analyst III for the Division of Food Distribution, Office of Consumer and Environmental Protection. This position was posted on April 12, 2011, and closed on April 21, 2011. There were a total of 178 applicants on the register: 51 internal mobility candidates, 3 of whom were Veterans, and 127 competitive candidates, 6 of whom were Veterans. Eight individuals were interviewed, 2 internal mobility and 6 competitive (5 of whom were Veterans). The candidate that was selected for the position had 19 years financial experience and was a non-merit employee with the Department of Agriculture.

Mr. Blevins asked if the position was a merit position. Ms. Fentress-Laird stated it was and that the non-merit employee who was selected is on 12-month probation. Mr. Hutcheson asked why the position was advertised as competitive when there were so many internal mobility applicants. Ms. Fentress-Laird stated that it allows a broader candidate pool. Mr. Hutcheson asked how many applicants applied from the Department of Agriculture. Ms. Fentress-Laird stated there were two internal mobility applicants and one competitive. Mr. Crocker explained the difference between an internal mobility candidate and a competitive candidate. Mr. Chandler asked who makes the decision to advertise competitively. Mr. Crocker stated that the agency makes that decision. Mr. Hutcheson asked how many people were on the selection panel. Ms. Fentress-Laird stated there were three people on the panel.

Mr. Sipek stated that there is one new appeal from Agriculture concerning this issue. The first pre-hearing is set for September 12, 2011.

Mr. Blevins moved to defer this matter until the appeal process was completed. Mr. Sapp moved to amend this motion (with Mr. Blevins' consent) to determine whether the Board has jurisdiction on some of the issues listed in the e-mail. [Mr. Crocker advised that the only issue the Board has jurisdiction over is the position presented by Ms. Fentress-Laird. All the other issues are outside the Board's jurisdiction, but may be under the jurisdiction of another state agency.] Mr. Chandler seconded the motion and the amendment.

Dr. Stevens asked for a vote on the amendment, which is to define the issues under the Board's jurisdiction and to discard the rest of the issues. The vote carried 6-0.

Dr. Stevens asked for a vote on the motion to defer this matter until completion of the appeal process. The vote carried 6-0.

Mr. Blevins added that although the issue of running personal errands may not be under the Board's purview, he found it to be unacceptable.

Dr. Stevens then turned the meeting back to Vice Chairman Gillis.

7. CLOSED SESSION

Mr. Sapp moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Vice Chairman Gillis stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (10:36 a.m.)

Dr. Stevens moved to return to open session. Ms. Gardner seconded and the motion carried 6-0. (11:59 a.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Lemon C. Moore v. Transportation Cabinet
(Deferred from July meeting)

Dr. Stevens moved to note Appellee's exceptions, Appellant's response and oral argument and to accept the Final Order Altering and dismissing the appeal, as attached to the minutes. Mr. Hutcheson seconded and the motion carried 6-0.

B. Laura Penn v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to note Appellee's exceptions, Appellee's request for oral argument (untimely), and Appellant's response and to defer this matter to the next meeting of the Board for the purposes of oral argument. Dr. Stevens seconded and the motion carried 6-0.

C. Betty Runner v. Cabinet for Health and Family Services – 4 appeals

Mr. Sapp moved to note Appellant's exceptions, Appellee's response, and Appellant's motion for clarification and to accept the recommended order dismissing the appeal and to deny Appellant's motion for clarification. Dr. Stevens seconded and the motion carried 6-0.

D. John Wardia v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 6-0.

E. Bettina Conard v. Justice and Public Safety Cabinet (2011-016)

Ms. Gardner moved to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 6-0.

F. Danius Jackson v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

G. William Madden v. Transportation Cabinet

Mr. Sapp moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

H. Bradley Nethery v. Cabinet for Health and Family Services

Ms. Gardner moved to accept the recommended order dismissing the appeal. Mr. Chandler seconded and the motion carried 6-0.

I. William Rasinen v. Education and Workforce Development Cabinet

Mr. Blevins noting Appellant's exceptions and request for oral argument (returned as untimely) moved to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 6-0.

J. Kimber Thiebout v. Justice and Public Safety Cabinet – 3 appeals

Dr. Stevens moved to accept the recommended order dismissing the appeals. Mr. Hutcheson seconded and the motion carried 6-0.

K. William Thomas v. Public Protection Cabinet

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 5-0, with Ms. Gardner recusing.

Show Cause Orders – No Response Filed – Appeal Dismissed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellant stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellant to the show cause order.

L. Drake Brewer v. Personnel Cabinet

Mr. Hutcheson moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Gardner seconded and the motion carried 6-0.

9. **WITHDRAWALS**

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Sapp seconded and the motion carried 6-0.

- A. Richard Chriscinski v. Energy and Environment Cabinet
- B. Mary Goff v. Department of Public Advocacy
- C. Edward Kohout v. Justice and Public Safety Cabinet
- D. Linda Osborne v. Department of Veterans' Affairs
- E. Erin Wright v. Tourism, Arts and Heritage Cabinet

10. SETTLEMENTS

Mr. Hutcheson moved to accept the following settlements *en bloc* and to accept the settlements as submitted by the parties; sustaining the appeal to the extent set forth in the settlement. Dr. Stevens seconded and the motion carried 6-0.

- A. Neil Brown, et al v. Education and Workforce Development Cabinet (14 appeals)
- B. Matthew Finley v. Public Protection Cabinet
- C. Connie Sea v. Education and Workforce Development Cabinet
- D. Orbin Samples v. Justice and Public Safety Cabinet (2 appeals)
- E. James Wren v. Department of Public Advocacy (mediated)

11. OTHER

Ms. Gardner moved to open nominations to elect a Chairman. Mr. Chandler seconded.

Ms. Gardner moved to nominate Vice Chairman Gillis.

Mr. Hutcheson moved to nominate Mr. Sapp.

Ms. Gardner moved to close nominations. Mr. Chandler seconded.

Vice Chairman Gillis asked for votes on Ms. Gardner's motion to elect Vice Chairman Gillis as Chairman. The motion failed with two votes for Vice Chairman Gillis.

Vice Chairman Gillis asked for votes on Mr. Hutcheson's motion to elect Mr. Sapp for Chairman. The motion carried with four votes, with Mr. Sapp abstaining.

Mr. Crocker advised that the term of Chairman should be determined. After discussion it was determined the Chairman position will end in March 2012 consistent with the end of the term for Vice Chairman.

Mr. Blevins stated that he appreciated the kindness shown to him on his first day on the Board.

There being no further business, Mr. Sapp moved to adjourn. Mr. Hutcheson seconded and the motion carried 6-0. (12:20 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Susan Gardner, Member

Tommy Chandler, Member

Donald W. Blevins, Member